

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
MODESTO DIVISION

In re)	Case No. 00-91261-A-13
MIKE J. LEE and SHERRY L. LEE)	Docket Control #None
Debtors.)	Date: November 15, 2005
)	Time: 2:00 p.m.
)	Dept: A

**FINDING OF FACT AND CONCLUSIONS OF LAW
ON APPLICATION FOR UNCLAIMED FUNDS**

The application of debtor Sherry Lee for unclaimed funds came on regularly for hearing November 15, 2005. The court permitted Mrs. Lee to supplement the record. The record has now been supplemented and no objection has been raised to the application.

The court finds Mike and Sherry Lee filed a joint chapter 13 petition on April 30, 2000. Their petition indicates that at the time the petition was filed, they both resided at the same address.

The Lees were able to complete their chapter 13 plan. Their discharge was entered on June 23, 2005.

Prior to the completion of their plan and the entry of their discharge, however, the Lees separated. Mrs. Lee filed a change of address on March 20, 2003 indicating that her new residence

1 was located on Mulberry Lane. Mr. Lee advised the court on
2 January 25, 2005, that he had a new residence on Washington Road.

3 The record before the court does not indicate whether the
4 plan payments were made by one or both of the debtors.

5 At the end of the chapter 13 case, the trustee sent a refund
6 of \$3,445.49 payable jointly to the Lees. When this check was
7 not negotiated, it was paid into the court's registry as
8 unclaimed.

9 Mrs. Lee now asks that one-half of the money on hand be paid
10 to her. Her application for one-half of the unclaimed funds has
11 not been joined by Mr. Lee but indicates the Lees "are currently
12 divorced."

13 There is no proof that Mr. Lee is aware of Mrs. Lee's
14 application for one-half of the unclaimed funds.

15 The application does not indicate whether the state court
16 granting their divorce awarded one-half of the unclaimed funds to
17 Mrs. Lee. Nor is there any evidence that the former spouses have
18 agreed to this division of the funds.

19 Given the separation of the spouses during the case, given
20 Mr. Lee's failure to join in the application, and given the
21 absence of any proof that the state court has awarded one-half of
22 the funds to Mrs. Lee, the court cannot say based upon the record
23 before it, that Mrs. Lee is entitled to one-half of the funds.
24 It can conclude only that the Lees are jointly entitled to the
25 funds.

26 The Stanislaus County Department of Child Support Services
27 has served its Order/Notice to Withhold Income for Child Support
28 on the bankruptcy attorney representing the Lees. It directs

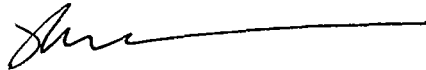
1 that amounts payable to Mike Lee up to \$5,669.22 be paid to the
2 Department of Child Support Services in connection with DCSS
3 number 298016-0. Sums so paid will be used to satisfy Mr. Lee's
4 obligation to pay child support.

5 Mrs. Lee has filed a declaration agreeing that her share of
6 the funds deposited in the court's registry as unclaimed funds be
7 paid to the Department of Child Support Services pursuant to its
8 order.

9 Therefore, while the court is not prepared on the record
10 before it to order the payment of any portion of the unclaimed
11 funds to either debtor separately, given that funds
12 unquestionably belong jointly to the debtors, given Mrs. Lee's
13 consent, given Mr. Lee's liability to the Department of Child
14 Support Services, given the service of that Department's order of
15 the debtors' attorney, and given that Mr. Lee's liability exceeds
16 the unclaimed funds, the court will separately order the payment
17 of the unclaimed funds to the Department of Child Support
18 Services.

19 Dated: 28 Nov 2005

20 BY THE COURT

21 

22 Michael S. McManus, Chief Judge
23 United States Bankruptcy Court
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26
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**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

CERTIFICATE OF SERVICE

The undersigned deputy clerk in the office of the United States Bankruptcy Court for the Eastern District of California hereby certifies that a copy of the document to which this certificate is attached was served by mail to the following entities listed at the address(es) shown below.

Office of the US Trustee
501 I St #7-500
Sacramento, CA 95814

Russell Greer
PO Box 3051
Modesto, CA 95353-3051

Michael Lee
4622 Washington Rd
Hughson, CA 95326

Sherry Lee
1813 Mullberry Ln
Hughson, CA 95326

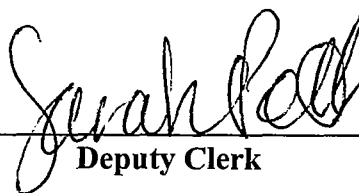
Steven A. Smith
PO Box 1824
Modesto, CA 95353-1824

Stanislaus County
Department of Child Support Services
PO Box 2180
Ceres, CA 95307-8680

DATED:

11/29/05

By:


Deputy Clerk